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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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CULIVER, et al., : 17-CV-3514 (LDW)  
Plaintiff, :  
-against- : United States Courthouse  
UNITED STATES OF AMERICA, : Central Islip, New York  
et al., :  
Defendant. : July 6, 2017  
: 10:30 a.m.  
- - - - - X

TRANSCRIPT OF CIVIL CAUSE FOR ORAL ARGUMENT  
BEFORE THE HONORABLE LEONARD D. WEXLER  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

For the Plaintiffs: HOGAN & CASSELL, LLP  
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For the Plaintiff: COWAN, LIEBOWITZ & LATMAN, P.C.  
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BY: RONALD W. MEISTER, ESQ.

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A P P E A R A N C E S:

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Proceedings recorded by computerized stenography.  
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1 (In open court.)

2 COURTROOM DEPUTY: All rise.

3 Calling civil Case 17-CV-3514, Culiver and  
4 others versus the United States of America and others.

5 Counsel, please state your appearances for the  
6 record.

7 MR. CASSELL: Sure. Good morning, Your Honor.  
8 Michael Cassell, Hogan and Cassell, 500 North Broadway,  
9 Suite 153, Jericho, New York 11753 for the plaintiffs  
10 Connor Culiver, David Burkhardt, Michael Heckmuller, Gavin  
11 Yingling and Cory Maier. Good morning, Your Honor.

12 THE COURT: That's how many plaintiffs for you?

13 MR. CASSELL: That's for the first five of the  
14 seven plaintiffs, Your Honor.

15 MR. MEISTER: Your Honor, Ronald Meister, Cowan  
16 Liebowitz & Latman, New York City representing the  
17 plaintiff Brennan Becker.

18 MR. SHEHAN: Your Honor, good morning. My name  
19 is Kevin Shehan from the law firm of Tully Rinckey PLLC,  
20 and I'm here on behalf of plaintiff Timothy Hughes.

21 MR. KNAPP: James Knapp, Assistant United States  
22 Attorney for the United States of America, the United  
23 States Department of Transportation, the United States  
24 Merchant Marine Academy, and Admiral James Helis, the  
25 superintendent of the United States Merchant Marine

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1 Academy. With me is Ilene Kreitzer, who is counsel to the  
2 academy.

3 THE COURT: We'll have the plaintiff go first.  
4 Go ahead.

5 MR. CASSELL: Good morning, Your Honor.

6 As set forth in our briefs, at issue in this  
7 case is the Government's refusal to provide our clients  
8 with their graduation documents. Obviously the Court has  
9 allowed them to graduate and attend the commencement  
10 ceremony. They have not received their diplomas, their  
11 Coast Guard licensing or --

12 THE COURT: Wait a minute. Stop for a second.  
13 You said I allowed them to graduate?

14 MR. CASSELL: There was an order issued that  
15 they attend the commencement ceremony, Your Honor.

16 THE COURT: Yes, but I didn't order them to be  
17 graduated.

18 MR. CASSELL: Correct, Your Honor. They have  
19 not received what we refer to as the graduation materials  
20 which is the documents related to the graduation, such as  
21 diploma, Coast Guard license, commissioning documents.

22 Most significantly, Your Honor, we're here in an  
23 Administrative Procedure Act case where Your Honor sits as  
24 an appellate tribunal to review the record below. The  
25 record below shows the superintendent violated, the

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1 undisputed evidence below shows that the superintendent  
2 violated my clients' due process rights and also that at  
3 every turn, the defense ignored their own policies and  
4 procedures.

5 The caselaw is clear. We referenced a case  
6 Goss v. Lopez, it's 419 U.S. 565, a Supreme Court case  
7 that discusses a --

8 THE COURT: Which case is that?

9 MR. CASSELL: It's Goss, G-O-S-S v. Lopez, 419  
10 U.S. 565. And that case discusses that before a school  
11 can even give what's called a ten-day suspension, and here  
12 keep in mind our clients are being indefinitely suspended  
13 for receiving materials they're entitled to as part and  
14 parcel of the graduation, there's no time period here.  
15 They say there's an investigation starting from September  
16 of last year. It's now been nine months. The academy  
17 says we don't now how long this investigation is going to  
18 be. Could be another year, could be two years. We have  
19 no idea. They're suspended in effect. In fact, they have  
20 no ability to, for some of our clients, to work in their  
21 field because they have no graduation documents with no  
22 deadline put in place.

23 THE COURT: I understand that.

24 MR. CASSELL: Getting back to the Goss case,  
25 Your Honor. I'd ask the Court to review that. It's very

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1 informative. It says prior to a school penalizing a  
2 student, the school must provide an explanation of the  
3 evidence the authorities have. We have no explanation at  
4 all. Tell us the superintendent submitted a declaration.  
5 There's nothing in there except for an admission that  
6 there is no specific evidence against our clients.

7 The entity that's suspending the student must  
8 provide evidence with an explanation so that the student  
9 can respond and some kind of hearing. Footnote 9 I ask  
10 the Court to look at because footnote 9 of the Goss  
11 decision discusses a similar situation where at best, even  
12 assuming as the Government alleges that something happened  
13 on the bus, at best we have a guilt-by-association case,  
14 which is exactly what happened in Goss.

15 THE COURT: Are you representing one of the  
16 individuals who claimed he wasn't even on the bus?

17 MR. CASSELL: I believe, Your Honor, that -- the  
18 problem, Your Honor, is there's --

19 THE COURT: No, no. I asked a simple question.  
20 I want a simple answer.

21 MR. CASSELL: Yes, Your Honor. Part of the --

22 THE COURT: Good, thank you.

23 MR. CASSELL: Part of the difficulty, Your  
24 Honor, is there some issue that there might have been one  
25 or two bus trips. It's not even clear based upon, once

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1 again, the lack of evidence that what we have exactly what  
2 the allegations are.

3 But in any event, what the Court talks about and  
4 Supreme Court talks about in Goss is the issue of where --

5 THE COURT: Why don't we come back to that  
6 later.

7 We'll take any other plaintiff want to be heard?

8 MR. CASSELL: Could I just -- sure.

9 MR. MEISTER: Good morning, Your Honor. Ronald  
10 Meister on behalf of the plaintiff Brennan Becker.

11 As Your Honor is aware, these students were  
12 deprived of these indicia of their graduation and their  
13 licenses because of the academy's actions where there was  
14 no charge. They admit that much in their brief. Their  
15 actions are depriving this plaintiff, my client, in  
16 violation of their own regulations.

17 THE COURT: I understand that.

18 MR. MEISTER: And their regulations require,  
19 among other things, Your Honor, if in fact there is a  
20 charge, as in Admiral Helis's letter there's an  
21 investigation of alleged sexual misconduct, a highly  
22 controversial charged allegation in the absence of any  
23 proof, they must conduct their own investigation  
24 regardless of what's happening with the Department of  
25 Transportation. This is not how the academy stands to do

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1 something.

2 They admit that they withheld notice from our  
3 clients from the September event until June. There's  
4 nothing more basic, Your Honor, than the right to notice,  
5 the right to a hearing.

6 The regulations that they are required to  
7 obey --

8 THE COURT: Okay, I understand that.

9 MR. MEISTER: All right. Thank you.

10 THE COURT: Do you want to be heard?

11 MR. SHEHAN: Yes, Your Honor.

12 THE COURT: By the way, I'm not disagreeing with  
13 anything you've said so far.

14 MR. MEISTER: I understand, Your Honor. I hope  
15 you wouldn't disagree with the other things I hope I have  
16 an opportunity to say.

17 THE COURT: Go ahead.

18 MR. SHEHAN: Thank you, Your Honor. My name is  
19 Kevin Shehan on behalf of Timothy Hughes, as I mentioned  
20 earlier. And my arguments are more practical in the sense  
21 that they focus on Mr. Hughes's circumstances specifically  
22 so that the Court can be sure that there's a basis to  
23 rule. I want to echo the legal arguments made by my  
24 colleagues, the counsel for the other plaintiffs in the  
25 matter.



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1           The basic outline of Mr. Hughes' position is  
2     that except for the administrative process that's at issue  
3     in this case, Mr. Hughes has met all the requirements  
4     needed to receive his diploma, which would be a BS in  
5     marine engineering systems, his license as a third  
6     assistant engineer from the Coast Guard, and his  
7     commission as a Navy reserve ensign. The Government  
8     acknowledges these facts. I would refer to paragraph 16  
9     and 20 of Admiral Helis's declaration.

10           THE COURT: But, counselor, you're not telling  
11     me anything new. We know all that.

12           Let's hear from the defendant.

13           MR. SHEHAN: Thank you, Your Honor.

14           THE COURT: My first question is what are the  
15     charges?

16           MR. KNAPP: There are no charges. We are  
17     talking about an investigation, Your Honor.

18           It's premature for us to even be here.

19           THE COURT: Premature?

20           MR. KNAPP: It's premature for us to even be  
21     here.

22           THE COURT: When did you first find out about  
23     the charges?

24           MR. KNAPP: Your Honor, there are two means of  
25     making a report of sexual misconduct or domestic violence

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1 as set forth in the Helis's declaration: restricted and  
2 unrestricted. The academy learned of --

3 THE COURT: I thought they called it deferred  
4 and --

5 MR. KNAPP: No, no. To make a claim, if someone  
6 claims they were sexually harassed, if they were sexually  
7 assaulted.

8 THE COURT: So how long has it been under  
9 investigation?

10 MR. KNAPP: Since February. The academy did not  
11 know that this occurred in September.

12 THE COURT: How did they know in February that  
13 something occurred on a bus?

14 MR. KNAPP: Because the inspector general was  
15 contacted.

16 THE COURT: By whom?

17 MR. KNAPP: Incident to another investigation.

18 THE COURT: By whom.

19 MR. KNAPP: I don't know by whom, Your Honor.

20 THE COURT: Okay. And what are the charges  
21 they're investigating?

22 MR. KNAPP: They're investigating allegations of  
23 assault and sexual misconduct by members of the soccer  
24 team.

25 You'll note that in the --

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1 THE COURT: What did they do? I still don't  
2 know. Nobody's telling me. You're not telling them.  
3 It's under investigation.

4 MR. KNAPP: That's right. That's why --

5 THE COURT: How long is it going to be under  
6 investigation?

7 MR. KNAPP: I can't answer that, Your Honor.  
8 I'm not the inspector general. The inspector general --

9 THE COURT: You represent them, don't you?  
10 Did you ever hear of the United States  
11 Constitution with due process?

12 MR. KNAPP: I have, Your Honor. I have.

13 THE COURT: How long is this due process?

14 MR. KNAPP: If there are charges lodged against  
15 them, these plaintiffs will receive all the process they  
16 are due. They'll get notice of the charge and they will  
17 get a hearing, and if they don't --

18 THE COURT: Then they'll have their due process,  
19 when you get around to it; is that correct?

20 MR. KNAPP: Your Honor's misstating my argument,  
21 respectfully.

22 THE COURT: I am?

23 MR. KNAPP: The argument is --

24 THE COURT: Wait a while.

25 Were they suspended?

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1 MR. KNAPP: They were not.

2 THE COURT: Were they told to get off the  
3 campus?

4 MR. KNAPP: They were.

5 THE COURT: Were they told they can't graduate?  
6 And you don't think that's a discipline?

7 MR. KNAPP: They don't --

8 THE COURT: That they were --

9 MR. KNAPP: There are --

10 THE COURT: Wait a while.

11 You don't think they're entitled to know what  
12 the charges are, how long it's going to be? Does this go  
13 on forever?

14 Did you ever hear of the United States  
15 Constitution of due process?

16 MR. KNAPP: Of course it can't go on forever.

17 THE COURT: Well, it's now you say February,  
18 March, April, May, June, July, and they still don't know  
19 and they're ordered off the campus, they can't go to  
20 class, but they're investigating it.

21 What are they investigating?

22 MR. KNAPP: Your Honor --

23 THE COURT: Do you know what they're  
24 investigating?

25 MR. KNAPP: Yes, and so do they. They got a

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1 notice from the superintendent that said they're under  
2 investigation for assault.

3 THE COURT: For what?

4 MR. KNAPP: Assault on a bus.

5 And the plaintiffs acknowledge themselves that  
6 something happened on that bus. The plaintiffs in their  
7 complaint say, they call it teasing. They acknowledge  
8 something happened on that bus. That's the basis for the  
9 OIG investigation.

10 They call it teasing. One man's teasing is  
11 another man's hazing.

12 THE COURT: When are there going to be charges?

13 MR. KNAPP: I cannot answer that.

14 THE COURT: I give you ten days to file charges.  
15 If not, I'll grant the judgment for the plaintiffs.

16 MR. KNAPP: Your Honor, there's one other --

17 THE COURT: This is not going to go on forever.

18 MR. KNAPP: And I agree with Your Honor.

19 THE COURT: Under your own rules and regulations  
20 you're supposed to have a hearing. You don't have a  
21 hearing. You're supposed to do something. You haven't  
22 done a thing, but it's under investigation.

23 MR. KNAPP: Your Honor --

24 THE COURT: They were ordered --

25 MR. KNAPP: I'm sorry.

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1 THE COURT: They were ordered off the campus.  
2 You refused to graduate them and it's going on for five  
3 months and still nobody knows what the charges are in the  
4 bus.

5 There's one person who says he wasn't even in  
6 the bus. Where does he stand?

7 MR. KNAPP: Your Honor, under the academy's  
8 honor code and regulations, if a midshipman knows about an  
9 event such as what's under investigation, they're  
10 obligated to report it as well. There's no indication  
11 that the midshipman who wasn't on that trip came forward  
12 and said you know what, something's amiss on the soccer  
13 team and you should look into it.

14 THE COURT: Have they looked into it?

15 MR. KNAPP: They are looking into it.

16 THE COURT: Still looking, okay.

17 You got ten days to submit charges. If not,  
18 plaintiff's going to get a judgment.

19 MR. KNAPP: Your Honor, there's one wrinkle  
20 administrative. The Department of Defense will not  
21 commission someone who is under investigation. The  
22 Department of Defense is not a party to this action and  
23 they, under their own regulations, will not commission  
24 someone until this is resolved.

25 THE COURT: Okay. I'll resolve it in ten days.

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1 Anything else?

2 MR. CASSELL: No, Your Honor. Thank you.

3 (Pause.)

4 MR. KNAPP: Your Honor, before we go off the  
5 record, can we have a clarification of the nature of the  
6 charges Your Honor is ordering the Government to come  
7 forward with within ten days?

8 THE COURT: You're asking me what the charges  
9 are?

10 MR. KNAPP: Criminal, administrative? The  
11 nature.

12 THE COURT: One second.

13 (Pause.)

14 THE COURT: The order is limited to the academy  
15 saying what the charges are.

16 MR. KNAPP: Thank you, Your Honor.

17 THE COURT: Okay.

18 MR. CASSELL: Thank you, Your Honor.

19 THE COURT: We will put it on the calendar ten  
20 days from now, which is what day?

21 MR. MEISTER: The 16th, it's a Sunday, Your  
22 Honor. The 17th?

23 THE COURT: 17th.

24 MR. KNAPP: Thank you, Your Honor.

25 (Time noted: 10:51 a.m.)

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